IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SJR FOODS LTD., LLC, Plaintiff, v. DONA CHELA BREWING COMPANY, SBC and NUESTRA CERVEZA LLC, Defendant.	Civil Action No. ___________ JURY TRIAL REQUESTED

COMPLAINT

Plaintiff, SJR FOODS Ltd., LLC (also referred to herein as "SJR FOODS") for its complaint against Dona Chela Brewing Company, SBC and Nuestra Cerverza LLC (collectively referred to herein "NUESTRA CERVEZA, LLC"), pleads and alleges as follows:

THE PARTIES

1. Plaintiff SJR FOODS is a Texas Limited Liability Company and has an address at 3919 Eastex Fwy, Houston, Texas 77026.

2. Defendant DONA CHELA BREWING COMPANY, SBC is a Minnesota Corporation with a registered office address at 7103 Trenton Ln N, Maple Grove, Minnesota 55369.

3. Defendant, NUESTRA CERVEZA LLC, is a terminated Minnesota limited liability company having an address at 8750 Flamingo Drive, Chanhassen, Minnesota 55317.

4. On information and belief DONA CHELA BREWING COMPANY, SBC and NUESTRA CERVEZA LLC are actively collectively operating to make, promote, offer for sale and distribute beer using the marks DOÑA CHELA and DONA CHELA. The allegations in this

paragraph have evidentiary support and will likely have additional evidentiary support after a reasonable opportunity for further investigation and discovery.

5. DONA CHELA BREWING COMPANY, SBC and NUESTRA CERVEZA LLC are collectively referred to herein as "NUESTRA CERVEZA."

NATURE OF ACTION AND JURISDICTION

6. This is an action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1051 et seq.

7. This Court has jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332 and 1338.

8. This Court has personal jurisdiction over defendants DONA CHELA BREWING COMPANY, SBC and NUESTRA CERVEZA, LLC because *inter alia* they both reside within this judicial district, do business in this judicial district and/or because the conduct complained of in this Complaint occurred in this judicial district.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

FACTS COMMON TO ALL CLAIMS ASSERTED

SJR FOODS' TRADEMARK RIGHTS

10. SJR FOODS was founded 2003 and is a family business offering a variety of Mexican food and beverage-related items.

11. One of the products offered by SJR FOODS is its DOÑA CHELA® brand beer-related michelada mix. A "michelada" is a beverage made by combining beer with a variety of spices and flavorings. SJR FOODS' DOÑA CHELA® brand mix is thus intended to be used with and is closely associated with beer.

12. SJR FOOD has been using its DOÑA CHELA® mark to promote is michelada mix products since at least the fall of 2007.

13. SJR FOOD has expended substantial sums promoting its DOÑA CHELA® brand. As example, SJR FOOD has:

13.1. promoted its DOÑA CHELA® products and brand through clothing and merchandise, examples of which include demos at liquor stores, beer events, websites, koozies, hats, and bottles; and

13.2. promoted its products nationally using the Internet domain name donachelamix.com.

14. SJR FOODS' DOÑA CHELA® brand michelada mix is nationally available for purchase, such as through https://specsonline.com/shop/foods/dona-chela-michelada-mix/ and http://www.elvenadofoods.com/en/dona-chela/145-michelada-mix.html.

15. As a result of the described and other activities, the DOÑA CHELA® brand is a widely recognized symbol of SJR FOODS's marketplace goodwill.

16. SJR FOODS' DOÑA CHELA® brand is the subject of United States Federal Trademark Registration No. 3,595,633. The DOÑA CHELA® trademark was registered on the Principal Register on March 24, 2009, and has become incontestable. A reproduction of the mark as registered is shown below:

DOÑA CHELA

17. Because of SJR FOODS's substantial use and promotion of the DOÑA CHELA® trademark, SJR FOODS' DOÑA CHELA® trademark has become well-known, distinctive of SJR FOODS's products, and has come to identify and indicate the source of SJR FOODS's products to the public. SJR FOODS has developed for itself and its products an excellent reputation.

18. SJR FOODS has never authorized or licensed NUESTRA CERVEZA to use any of SJR FOODS' trademarks, including its DOÑA CHELA® trademark in connection with beer and beverage related products or offerings.

NUESTRA CERVEZA'S INFRINGEMENT

19. NUESTRA CERVEZA recently began using the marks DOÑA CHELA and DONA CHELA to promote beer and beer-related products.

20. Among other things, NUESTRA CERVEZA has used the mark DOÑA CHELA in connection with its offering of beer and beer related products such as drinking glasses and as reflected by, for example, the images below:

DOÑA
CHELA
CERVECERIA

CERVEZA ARTESANAL
DOÑA
CHELA
CERVECERIA
LAGER BRONCE

DOÑA
CHELA
DOÑA
CHELA
DOÑA
CHELA

21. Among other things, NUESTRA CERVEZA has used the mark DONA CHELA in connection with its offering, promotion of beer and beer related products such as glasses and as reflected by, for example,

21.1. Its use of the Internet domain name DONACHELABEER.COM to promote its products; and

21.2. It use of the Twitter Account @DonaChelaBeer to promote its products.

22. On January 11, 2016, NUESTRA CERVEZA filed an Intent-to-Use Application with the United States Patent and Trademark Office seeking to register the mark DOÑA CHELA for use with beer. The application was assigned Ser. No. 86/871,212.

23. On May 5, 2016, the United States Patent and Trademark Office issued an Official Letter concerning NUESTRA CERVEZA intent-to-use trademark application in which

it refused to register the DOÑA CHELA mark to NUESTRA CERVEZA for use with beer "because of a likelihood of confusion with the mark in [SJR FOOD'S] U.S. Registration No. 3595633 [for the DOÑA CHELA mark]."

24. In finding that NUESTRA CERVEZA's proposed use of the DOÑA CHELA mark in connection with beer would result in a likelihood of confusion with respect to SJR FOODS' registered DOÑA CHELA mark, the United States Patent and Trademark Office specifically found that:

24.1. NUESTRA CERVEZA's proposed DOÑA CHELA mark was "identical in appearance, sound and meaning [to SJR FOODS' registered DOÑA CHELA mark] 'and has the potential to be used. . .in exactly the same manner";

24.2. because of the identity between NUESTRA CERVEZA's proposed DOÑA CHELA mark SJR FOODS' registered DOÑA CHELA mark "these marks are likely to engender the same connotation and overall commercial impression when considered in connection with [NUESTRA CERVEZA's] and [SJR FOODS'] respective goods and/or services";

24.3. that the goods upon which NUESTRA CERVEZA proposed using the DOÑA CHELA mark were "closely related to [SJR FOODS' goods for its registered DOÑA CHELA mark] "because they are alcoholic beverages and goods made in preparation of alcoholic beverages" in that – among other things – "[m]icheladas are beverages that are made with beer, which is [NUESTRA CERVEZA's] goods" such that "preparations that are used to make [SJR FOOD's] goods may be those beer goods provided by [NUESTRA CERVEZA]" such that "consumers would believe that the goods (beer and Preparations of micheladas) under the marks DOÑA CHELA may emanate from the same source"; and

24.4. that "in view of the relatedness of the marks and the goods, there is a strong likelihood that consumers would perceive that the goods emanate from a common source."

25. Despite the specific finding of the United States Patent and Trademark Office that SJR FOODS owned a Federal Registration for the DOÑA CHELA trademark and that NUESTRA CERVEZA's proposed use of the mark with beer would result in a likelihood of confusion and consumer confusion, NUESTRA CERVEZA nevertheless proceeded to use the DOÑA CHELA trademark in violation of SJR FOOD's rights.

26. As a result of at least the above described acts, NUESTRA CERVEZA's use of the DOÑA CHELA and DONA CHELA trademarks was done with full knowledge of SJR FOODS' rights in the DOÑA CHELA® trademark and of SJR FOODS' Federal Trademark Registration in the DOÑA CHELA ® trademark mark such that its infringement of SJR FOODS' trademark rights was and remains willful and deliberate.

COUNT I
INFRINGEMENT OF FEDERAL TRADEMARK

27. SJR FOODS repeats the allegations of the preceding paragraphs as if fully set forth herein.

28. NUESTRA CERVEZA's unauthorized use of the marks DOÑA CHELA or DONA CHELA, or marks confusingly similar thereto, is likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitutes federal trademark infringement in violation of 15 U.S.C. § 1114(1).

29. Because of NUESTRA CERVEZA's conduct, SJR has suffered, will suffer and/or continues to suffer damages including, without limitation, the loss of revenue and reputation but

for NUESTRA CERVEZA's acts, in an amount to be proven at trial and the loss of goodwill and exclusivity in SJR FOODS's trademarks.

30. As a direct and proximate result of NUESTRA CERVEZA's above-described conduct, NUESTRA CERVEZA has been unjustly enriched and should be ordered to disgorge any and all profits earned as a result of such unlawful conduct.

31. Unless enjoined by this Court, NUESTRA CERVEZA's above-described conduct will cause irreparable injury, for which SJR FOODS has no adequate remedy at law, in the nature of injury to the reputation and goodwill of SJR FOODS' trademarks as well as confusion and deception among customers. SJR is entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

32. NUESTRA CERVEZA's actions were taken in willful, deliberate, and/or intentional disregard of SJR FOODS's rights. SJR FOODS is entitled to recover treble damages, SJR FOODS's attorneys' fees, and the costs of this litigation pursuant to 15 U.S.C. § 1117.

COUNT II
FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN

33. SJR FOODS repeats the allegations of the preceding paragraphs as if fully set forth herein.

34. The acts of NUESTRA CERVEZA complained of herein constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

35. NUESTRA CERVEZA's activities are likely to cause confusion, or to cause mistake or to deceive as to affiliation, connection, or association of NUESTRA CERVEZA and their goods and services with SJR FOODS, or as to the origin, sponsorship or approval of

NUESTRA CERVEZA 's goods and services by SJR FOODS, all in violation of 15 U.S.C. § 1125(a).

36. Because of NUESTRA CERVEZA's conduct, SJR FOODS has suffered, will suffer and/or continues to suffer damages including, without limitation, the loss of revenue and reputation but for NUESTRA CERVEZA's acts, in an amount to be proven at trial and the loss of goodwill and exclusivity in SJR FOODS's trademarks.

37. As a direct and proximate result of NUESTRA CERVEZA's above-described conduct, NUESTRA CERVEZA has been unjustly enriched and should be ordered to disgorge any and all profits earned as a result of such unlawful conduct.

38. Unless enjoined by this Court, NUESTRA CERVEZA's conduct will cause irreparable injury, for which SJR FOODs has no adequate remedy at law, in the nature of injury to the reputation and goodwill of SJR FOODS's trademarks as well as confusion and deception among customers. SJR is entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

39. NUESTRA CERVEZA's actions were taken in willful, deliberate, and/or intentional disregard of SJR FOODS's rights. SJR FOODS is entitled to recover treble damages, its attorneys' fees, and the costs of this litigation pursuant to 15 U.S.C. § 1117.

COUNT III
STATE DECEPTIVE TRADE PRACTICES
MINNESOTA STATUTES 325D.44 (2016)

40. SJR FOODS repeats the allegations of the preceding paragraphs as if fully set forth herein.

41. The actions of NUESTRA CERVEZA complained of above constitute unfair competition and deceptive practices in violation of the law of the State of Minnesota.

42. NUESTRA CERVEZA's use of a confusingly similar name and trademark, causes likelihood of confusion or misunderstanding as to the source, sponsorship, approval of the

goods it is offering and causes likelihood of confusion or misunderstanding as to its affiliation, connection or association with SJR FOODS.

43. NUESTRA CERVEZA's actions constitute unfair competition and deceptive practices under Minnesota Statues 2016, Section 325D.44.

44. Pursuant to Minn. Stat. § 325D.45, Plaintiff is entitled to recover its costs and attorneys' fees.

COUNT IV
INFRINGEMENT OF COMMON LAW TRADEMARK

45. SJR FOODS repeats the allegations of the preceding paragraphs as if fully set forth herein.

46. NUESTRA CERVEZA's acts described above constitute common law trademark infringement.

47. Because of NUESTRA CERVEZA's above-described conduct, SJR has suffered and continues to suffer damages including, without limitation, unjust enrichment damages, in an amount to be proven at trial based on NUESTRA CERVEZA's gross sales less only elements of cost or deduction allowed by this Court.

48. Unless enjoined by this Court, NUESTRA CERVEZA's above-described conduct will cause irreparable injury, for which SJR has no adequate remedy at law, in the nature of injury to the reputation and goodwill of SJR as well as confusion and deception among customers.

COUNT V
COMMON LAW UNFAIR COMPETITION

49. SJR FOODS repeats the allegations of the preceding paragraphs as if fully set forth herein.

50. NUESTRA CERVEZA's activities complained of constitute common law unfair competition under Minnesota common law in that they are likely to cause consumers to believe that NUESTRA CERVEZA's products originate from the same source as, or are sponsored or approved by SJR FOODS, or that there is an association, affiliation or connection between NUESTRA CERVEZA and SJR FOODS.

51. Upon information and belief, NUESTRA CERVEZA's actions are with the knowledge of SJR FOODS DOÑA CHELA® mark and with the intent to cause confusion and/or trade on SJR FOODS' reputation and goodwill.

52. SJR FOODS has and will continue to be irreparably harmed and damaged by NUESTRA CERVEZA's conduct and SJR FOODS lacks an adequate remedy at law to compensate for this harm and damage.

PRAYER FOR RELIEF

WHEREFORE, SJR FOODS prays that:

1. NUESTRA CERVEZA and all agents, servants, employees, attorneys, and all those persons in active concert or participation with any of them, be permanently enjoined from and ordered to:

(a) Cease using SJR FOODS' DOÑA CHELA® mark, and any other mark that is confusingly similar to SJR FOODS' DOÑA CHELA® mark, including, but not limited any other mark that is likely to cause confusion, in any manner that violates the rights of SJR FOODS; and modify all of NUESTRA CERVEZA 's signage, advertising, social media usage, product packaging, and promotional material to eliminate infringement of SJR FOODS' DOÑA CHELA® mark or any confusingly similar mark;

(b) Destroy all infringing works, business materials, brochures, web pages, advertising, signage, temporary signage or logos, invoices, business cards, or business materials, sales decks, and the like within the care, custody or control of NUESTRA CERVEZA that violate any right of SJR FOODS.

2. SJR FOODS be awarded all damages it sustains as a result of NUESTRA CERVEZA 's infringement and unfair competition, and that said damages be trebled;

3. NUESTRA CERVEZA be required to provide an accounting to determine NUESTRA CERVEZA's profits resulting from NUESTRA CERVEZA's activities complained of herein, and that such profits be paid over to SJR FOODS, increased as the Court finds to be just under the circumstances of this case;

4. SJR FOODS is awarded statutory damages, costs and fees.

5. SJR FOODS recover its costs of this action and prejudgment and post-judgment interest, and attorney fees; and

6. SJR FOODS recover such other and further relief as the Court may deem just and appropriate.

JURY DEMAND

SJR FOODS hereby demands a trial by jury on all issues triable as of right by a jury.

Dated: June 1, 2017

SJR FOODS Ltd., LLC

By its Attorneys,
s/Scott W. Johnston
Scott W. Johnston (MN #247558)
Linhda Nguyen (MN #397262)
MERCHANT & GOULD P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 332-5300

Of Counsel:
SUTTON MCAUGHAN DEAVER PLLC
Robert J. McAughan, Jr.
Texas Bar No. 00786096
S.D. Tex. No. 16,501
bmcaughan@smd-iplaw.com

Albert B. Deaver, Jr.
Texas Bar No. 05703800
S.D. Tex. No. 11,300
adeaver@smd-iplaw.com
Three Riverway, Suite 900
Houston, Texas 77056
Telephone: (713) 800-5700
Facsimile: (713) 800-5699

Facsimile: (612) 332-9081

Attorneys For Plaintiff SJR Foods Ltd., LLC